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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. ~~1165~~ 133

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, deceased,

Petitioner,

against

ROLLS-ROYCE LIMITED, and ROLLS-ROYCE INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF KINGS

BRIEF FOR RESPONDENTS ROLLS-ROYCE LIMITED AND ROLLS-ROYCE INC. IN OPPOSITION

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INDEX

	PAGE
Opinion below	1
Jurisdiction	2
Statement	2
Argument	4
Conclusion	6

CITATIONS

Cases:

American Ry. Exp. Co. v. Levee, 263 U. S. 19	4
Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U. S. 673	4
Guaranty Trust Co. v. Blodgett, 287 U. S. 509	5
Hicklin v. Coney, 290 U. S. 169	5
International Harvester Co. v. Wisconsin Dept. of Taxation, 322 U. S. 435	5
Kingsley Pictures Corp. v. Regents, 360 U. S. 684	5
McKane v. Durston, 153 U. S. 684	5
Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U. S. 157	4
Minnesota ex rel. Pearson v. Probate Court, 309 U. S. 270	5
Musser v. Utah, 333 U. S. 95	5
National Union of Marine Cooks & Stewards v. Arnold, 348 U. S. 37	5
Supreme Lodge, Knights of Pythias v. Meyer, 265 U. S. 30	5

PAGE

Szuchy v. Hillside Coal & Iron Co., 150 N. Y. 219 .. 5

Winters v. New York, 333 U. S. 507 5

STATUTES CITED

28 U.S.C. § 1257 4

New York Civil Practice Law and Rules § 5514 ..... 4, 5

IN THE

Supreme Court of the United States

October Term, 1963

No. 1165

MAURICE STEINGOLD, Executor of the Estate of SAMUEL A. STEINGOLD, deceased,

Petitioner,

against

ROLLS-ROYCE LIMITED, and ROLLS-ROYCE INC.,

Respondents.

BRIEF FOR RESPONDENTS ROLLS-ROYCE LIMITED AND ROLLS-ROYCE INC. IN OPPOSITION

Opinions Below

The opinions of the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department on the cases joined in this single petition are reported in 19 App. Div. 2d 752, 778; 242 N.Y.S. 2d 1018, 1020, and 1021.

The opinions of the Supreme Court of the State of New York, County of Kings, are reported at 34 Misc. 2d 33; 227 N.Y.S. 2d 639.

Jurisdiction

Petitioner asserts jurisdiction under 28 U.S.C. § 1257 (3).

Statement

On January 10, 1962 the Petitioner attempted to commence in the Supreme Court of the State of New York, County of Kings, against Respondent Rolls-Royce Limited, an English corporation, Respondent Rolls-Royce, Inc. and others, an action for wrongful death arising out of the crash of a commercial airliner in Virginia. Service of a copy of the summons and complaint was made on an employee of Rolls-Royce, Inc., a Delaware corporation. A special appearance was made under New York law by Rolls-Royce Limited to dismiss on the grounds of improper service and lack of personal jurisdiction over Respondent. Other defendants made similar motions as well as *forum non conveniens* motions.

Petitioner had previously instituted a collateral suit arising out of the identical air crash in the United States District Court in Virginia. Both actions are based upon the appropriate laws of Virginia creating a cause of action for wrongful death. Under the Virginia wrongful death statute and in the Virginia action, plaintiff is limited to a maximum of $30,000 in damages. In the New York action plaintiff sought damages in excess of $30,000. The flight on which plaintiff's decedent was a passenger was en route from Washington National Airport in Arlington, Virginia to Norfolk, Virginia and did not originate in, pass through nor was it destined for any point within the State of New York.

On March 29, 1962 all of the motions to dismiss the complaint and vacate the service of process were granted

by the Supreme Court of the State of New York, County of Kings. That court was of the opinion that the connection of the witnesses and the cause of action with the State of New York did not warrant its courts to take cognizance of a tort action under the above circumstances. The court also ruled that service of process upon an employee of Rolls-Royce, Inc. was ineffective to reach Rolls-Royce Limited.

The collateral suit in the United States District Court in Virginia is still pending. Contrary to the statement made by Petitioner (Petition, p. 5), no ruling has yet been made as to the amenability of Respondent Rolls-Royce Limited to the jurisdiction of the District Court in Virginia.

Petitioner appealed all of the orders of the Supreme Court, Kings County, to the Appellate Division, Second Department, of the Supreme Court of the State of New York. On July 10, 1963 said Appellate Division unanimously affirmed the lower court's decision. On October 27, 1963 the Petitioner moved in the Appellate Division, Second Department for leave to appeal to the New York Court of Appeals. This motion was unanimously denied.

On November 6, 1963 the Petitioner served a notice of appeal purportedly as of right to the New York Court of Appeals. On November 27, 1963 the Court of Appeals denied said motion on the ground of the non-finality of the orders below. Petitioner then had 30 days within which to move for permission to appeal in the Court of Appeals, to wit, December 27, 1963.

On January 10, 1964 Petitioner moved for permission to appeal to the Court of Appeals, which motion was denied on February 20, 1964 on the ground that it was not made within the time required by statute.

Argument

1. Petitioner is seeking a writ of *certiorari* to the wrong court. It is not appropriate for any writ of *certiorari* to issue to the Supreme Court of the State of New York, County of Kings, the lowest court which has made any determination herein. The outstanding reviewable order with respect to the motions made by Respondents Rolls-Royce Limited and Rolls-Royce, Inc. is that of the affirmance by the Appellate Division, Second Department. Under 28 U.S.C. § 1257 review by this Court may be granted from a judgment or decree of the highest court of a state in which a decision may be had. It is the Appellate Division, Second Department to which the Petition for *certiorari* should be directed. *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157; *American Ry. Exp. Co.* v. *Levee*, 263 U. S. 19. Accordingly, the Petition herein to the Supreme Court of the State of New York, County of Kings, must be denied.

2. The Federal question allegedly involved herein, *i.e.*, the dismissal by the New York Court of Appeals of Petitioner's motions for leave to appeal has not in Petitioner's own words "heretofore been raised, as the said dismissals were the last proceedings in the subject litigation" (Petition, p. 7). The appropriate procedure herein was for Petitioner to raise said allegedly Federal question by a motion for a rehearing to the New York Court of Appeals in order to give that court an opportunity to rule upon any Federal question allegedly asserted. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673, 677-78. Petitioner did not do so and cannot raise any Federal questions for the first time in this Court.

3. Petitioner is complaining of an allegedly erroneous interpretation of Section 5514 of the New York Civil Practice Law and Rules by the New York Court of Appeals.

An erroneous interpretation of a procedural statute by a State court in no manner affords this Court grounds for the granting of *certiorari*.

Under frequently repeated holdings of this Court, it must accept the decision of the highest court of a state fixing the meaning of state legislation. *Supreme Lodge, Knights of Pythias* v. *Meyer*, 265 U. S. 30, 32; *International Harvester Co.* v. *Wisconsin Dept. of Taxation*, 322 U. S. 435, 445; *Winters* v. *New York*, 333 U. S. 507, 514; *Musser* v. *Utah*, 333 U. S. 95, 98; *Minnesota ex rel. Pearson* v. *Probate Court*, 309 U. S. 270, 273; *Hicklin* v. *Coney*, 290 U. S. 169, 172.

The Supreme Court will not accept *certiorari* to review and correct every alleged misstep of procedure in lower courts. It accepts the state court's construction and proceeds to test its validity on that basis. *Guaranty Trust Co.* v. *Blodgett*, 287 U. S. 509, 513; *Kingsley Pictures Corp.* v. *Regents*, 360 U. S. 684, 688.

Accepting the construction of CPLR § 5514 by the New York Court of Appeals, the said statute can in no manner be said to have violated any rights of Petitioner under the United States Constitution. No Federally protected right exists guaranteeing to a litigant the right to have an appeal heard by the highest court of a state. *National Union of Marine Cooks & Stewards* v. *Arnold*, 348 U. S. 37, 43; *McKane* v. *Durston*, 153 U. S. 684, 687-88. This is most certainly the case in a court of limited appellate review such as the New York Court of Appeals. New York Constitution, Article VI, § 7.

The appellate procedure provided by the New York statute is entirely permissive in nature and in no way grants litigants vested rights to pursue an appeal. *Szuchy* v. *Hillside Coal & Iron Co.*, 150 N. Y. 219. Petitioner himself failed to follow the requirements of the statute. Under any view of this record, Petitioner has not been denied any remedies which were not lost by his own dilatory actions.

Conclusion

The Petition for a Writ of *Certiorari* is directed to the wrong court, presents an allegedly Federal question never appropriately raised below, and presents no Federal grounds warranting the granting of *certiorari*. Accordingly, the Petition should be denied.

Respectfully submitted,

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